DOCKET FILE COPY ORIGINAL

**ORIGINAL**

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

RECEIVED

OCT 3 0 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

| | | |
|---|---|---|
| In the Matter of | ) | |
| Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 | ) | CC Docket No. 96-128<br>DA 97-2214 |

# COMMENTS OF THE AMERICAN PUBLIC COMMUNICATIONS COUNCIL ON REQUESTS FOR WAIVERS OF THE ANI DIGITS REQUIREMENT

Albert H. Kramer
Robert F. Aldrich
DICKSTEIN SHAPIRO MORIN
& OSHINSKY LLP
2101 L Street, N.W.
Washington, D.C. 20037-1526
(202) 828-2226

Attorneys for the American Public
Communications Council

October 30, 1997

No. of Copies rec'd 0+4
List ABCDE

769008
Client No. A5691.543

## TABLE OF CONTENTS

## SUMMARY

Instead of taking coordinated steps to clarify and comply with their respective call tracking obligations under the Payphone Order, local exchange carriers ("LECs") and interexchange carriers ("IXCs") decided to play regulatory "chicken". As a result, independent payphone providers are caught in the middle, and the fulfillment of a key piece of the Telecommunications Act mandate for payphone competition -- the per-call compensation mandate for access code and "subscriber 800" calls -- is in jeopardy. In order to straighten out the mess, the FCC granted a waiver of the call tracking requirements on its own motion, and is now being asked to grant "temporary" waivers of call tracking obligations for every LEC and, in effect, every IXC -- waivers of such broad scope that they at least temporarily eviscerate the per-call compensation rule.

APCC is very reluctant to accept these rule-eviscerating waivers. In our view, neither LECs nor IXCs have satisfactory excuses for their cavalier neglect of their per-call compensation obligations. However, the bleak reality seems to be that a temporary extension of flat-rate compensation is necessary to ensure that PSPs are fairly compensated for the next few months in a timely manner.

In order to avoid a further impasse as the IXC and LECs bicker over who is responsible for what, the Commission should immediately provide clear answers to four questions: (1) what coding digit system is ultimately required; (2) what is the timetable for complete implementation of this system; (3) how should the required coding digit service

be tariffed; and (4) what kind of compensation plan should be in effect during the waiver period. The Commission must ensure that PSPs are compensated in a fair and timely manner to ensure the survival of payphone competition and carry out Congress's mandate for a fully competitive payphone industry..

As to the ultimate type of system, the Commission must immediately make clear what is required, or the LECs and IXCs will continue to demonstrate their ability to work at cross-purposes while stonewalling each other and achieving nothing. The record appears to favor Flex ANI as the least costly system that can fully and efficiently implement the required per-call system.

As to the timetable, APCC believes that LECs should be required to provide, and IXCs should be required to accept, the delivery of Flex ANI or whatever coding digit service is ultimately mandated no later than March 9, 1997, from every payphone line except those served by non-equal access switches. Lines served by non-equal access switches should be subject to flat-rate compensation until such time as they are converted to equal access. Any LEC that fails to implement the required system by the FCC's deadline should be ineligible for payphone compensation and should be liable for any resulting losses incurred by PSPs. Any IXC that fails to accept and track calls accurately based on Flex ANI should be subject to double compensation obligations, based on reasonable estimates of dial-around call volumes.

The required coding digit scheme must be federally tariffed, and PSPs should not be charged for more than their fair share of the costs. Obviously, PSPs may not be assessed for any equal access conversion costs. Further, any costs attributed to Flex ANI should be assessed at least partly on IXCs, since they are likely to derive numerous other benefits from the provision of the service. Any charges assessed on PSPs should be assessed equally on subscribers to "smart" and "dumb" payphone lines. Finally, any charges assessed on PSPs for the provision of the required digit service must be added into the dial-around compensation rate to the extent that they exceed the Commission's prior cost estimate of one cent per call. If the Commission allows charges to be assessed solely on subscribers to "dumb" lines, then the compensation rate must be adjusted to reflect the resulting cost differential incurred by PSPs subscribing to "smart" and "dumb" lines.

APCC reluctantly accepts the grant of a waiver to allow IXCs to "continue" paying compensation on a flat-rate basis, even though evidence and logic suggest that it is entirely feasible for IXCs to track and pay per-call compensation using the information they currently receive. In order to prevent further delays and interruptions of payphone compensation that threaten the economic life of independent PSPs, *the Commission must require that flat-rate compensation for the waiver period be paid on time* -- i.e., no later than the due date for per-call compensation. Indeed, the Commission should condition IXC waivers on monthly compensation payments in order to ameliorate the effects of past payment interruptions and to encourage use of a fairer payment method.

To ensure timely payments, the Commission should prescribe for the Waiver Period a provisional flat rate, subject to true-up, based on the best current estimate of average dial-around traffic volume (152 calls) and based on a provisional allocation of compensation payments among carriers. The provisional allocation among carriers for the Waiver Period can be similar to the Commission's previous plan for interim compensation (i.e., based on relative toll revenues of carriers with more than $100 million annual revenue). However, LECs should be included among the paying carriers. The allocation would be provisional only, since it would be subject to carrier-to-carrier true-up once actual call data is available. An alternative method would be to require IXCs, as a condition of waivers, to submit reports of their annual 800 service revenue, and use that data as the basis for a provisional allocation.

The flat-rate waiver should apply to all dumb payphone lines that do not currently transmit payphone-specific ANI digits. To prevent gaming of the system to the detriment of fair compensation, IXCs and LECs should not be able to pick and choose the extent to which they pay or collect flat-rate vs. per-call compensation.

Provisional payments should be subject to a true-up based on actual call volume data. One true-up should be conducted among the carriers subject to compensation obligations, to ensure that the ultimate allocation of payments during the waiver period reflects the actual distribution of dial-around calls to the extent practicable. A second true-up should be conducted between carriers and PSPs, to ensure that PSPs' ultimate compensation reflects the best available estimate of dial-around traffic levels at payphones.

One approach to this carrier-PSP true-up would adjust the estimate of the industry average of calls subject to flat-rate compensation, based on later-reported traffic data. Another approach would enable PSPs that can demonstrate unusually high levels of dial-around traffic at certain payphones to collect compensation for the actual level of such traffic.

The Commission decisions on these issues must be made as soon as possible to provide regulatory certainty and ensure timely payment of fair compensation and the earliest implementation of a competitive payphone regime.

**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

| | | |
|---|---|---|
| In the Matter of | ) | |
| Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996 | ) | CC Docket No. 96-128<br>DA 97-2214 |

**COMMENTS OF THE**
**AMERICAN PUBLIC COMMUNICATIONS COUNCIL**
**ON REQUESTS FOR WAIVER OF THE ANI DIGITS REQUIREMENT**

The American Public Communications Council ("APCC") submits the following comments in response to the Commission's Public Notice, DA 97-2214, released October 20, 1997, requesting comment on the requests of the United States Telephone Association, the LEC ANI Coalition, and TDS Communications Corporation for waivers of the requirement that local exchange carriers ("LECs") provide payphone-specific coding digits to assist compensation payers in tracking calls in order to pay payphone compensation. Our comments also address AT&T's request, referenced in the Public Notice, for a temporary waiver of the requirement to pay per-call compensation.

**BACKGROUND**

Section 276 of the Communications Act requires a comprehensive restructuring of the payphone industry. LECs are required to discontinue the historic subsidies of their payphones by local exchange and exchange access revenues, and to eliminate all discrimination in favor of their own payphones. In addition, to ensure that all payphone providers have an opportunity to compete and to contribute to the "widespread deployment of payphone services" that Congress sought to promote, Section 276 requires the Commission to "establish a per-call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone." 47 U.S.C. § 276(b)(1)(A).

A key piece of this compensation plan is the prescription of compensation for access code ***and*** "subscriber 800" calls (collectively, "dial-around" calls).[1] In enacting Section 276, Congress expressly sought to fill the vacuum left by the FCC's prior failure to correctly interpret and to exercise its authority to prescribe compensation under Section 226(e)(2) of the Act -- the Telephone Operator Consumer Services Improvement Act of 1990. In its 1991 payphone compensation proceeding under Section 226,[2] the FCC prescribed compensation for interstate access code calls (estimated to comprise on average

---

1 Access code calls are calls that are dialed by means of 800 numbers or other specialized dialing sequences in order to reach a carrier's platform for processing alternatively billed calls such as calling card or collect calls. "Subscriber 800" calls include toll-free 800 (or 888, 877, etc.) number calls that route the caller directly to the called party and not to a carrier's call-processing platform.

2 Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Report and Order and Further Notice of Proposed Rulemaking, 6 FCC Rcd 4736 (1991) ("Compensation/Subscriber 800 Order"); Order on Reconsideration, 7 FCC Rcd 4355 (1992) ("Compensation/Subscriber 800 Reconsideration"); Second Report and Order, 7 FCC Rcd 3251, 3252-53 (1992) ("Second Compensation Order"); Order on Reconsideration, 8 FCC Rcd 7151 (1993) ("Second Compensation Reconsideration").

15 calls per payphone per month), but ruled that Section 226(e)(2) did not authorize the FCC to prescribe compensation for the much larger number of subscriber 800 calls.[3] As a result of this ruling, independent PSPs received no compensation for subscriber 800 calls for more than four years -- from June 1, 1992 (the effective date of access code compensation) through November 6, 1996 (the effective date of "interim" Section 276 compensation).[4]

Congress expressly addressed this omission in Section 276 by directing the Commission unambiguously to ensure that payphone service providers ("PSPs") are fairly compensated for "each and every completed interstate and intrastate call."

In the Payphone Order,[5] the Commission prescribed per-call compensation of 35 cents per call for all access code and subscriber 800 calls, beginning October 7, 1997.[6]

---

[3] In Florida Public Telecommunications Ass'n v. FCC, 54 F.3d 857 (D.C. Cir. 1993) ("FPTA"), the court remanded to the FCC the Commission's erroneous action in the Compensation/Subscriber 800 Order and Compensation/Subscriber 800 Reconsideration. Before the Commission could act on the remand, the 1996 Act was passed.

[4] Since LEC payphones were still part of the regulated rate base during this period (prior to passage and implementation of Section 276 of the 1996 Act), the LECs were recovering all their payphone related costs through subsidies embedded in their regulated revenue requirement.

[5] Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, 11 FCC Rcd 20,541 (1996) ("Payphone Order"); Order on Reconsideration, 11 FCC Rcd 21,233, 21,265-66, 21,278-80, paras. 64, 93-99 (1996) ("Payphone Recon."); Second Report and Order, CC Docket No. 96-128, FCC 97-371 (rel. Oct. 9, 1997) ("Second Payphone Order") (together the "Payphone Orders").

[6] Subsequently this amount was reduced to \$.284 as a result of the Court's
(Footnote continued)

The date was set approximately one year after the commencement of the new compensation scheme because the Commission determined that, prior to that time, carriers would not be ready to track individual payphone calls so as to identify them correctly as payphone calls and identify the payphone provider whose payphone originated the call.[7] During the "interim" period, from November 6, 1996 to October 7, 1997, the Commission prescribed "flat rate" compensation of $45.85 per month[8] to be paid by an allocation among interexchange carriers with toll revenues greater than $100 million,[9] based on their relative share of toll revenues.[10]

---

(Footnote continued)
decision in Illinois Public Telecommunications Ass'n v. FCC, 117 F.3d 555 (D.C. Cir. 1997) ("IPTA"). Second Payphone Order, ¶ 4.

7 The per-call compensation covers all calls that are not compensated pursuant to contract with a carrier. Thus, per-call compensation also includes certain other calls -- for example, some portion of 0- calls that are required to be routed to LEC operators , in addition to access code calls and subscriber 800 calls. However, the overwhelming bulk of the calls subject to prescribed per-call compensation are access code or subscriber 800 calls.

8 The per payphone compensation was based on record evidence showing an average of 131 "dial-around" (i.e., access code and subscriber 800) call per payphone per month. The amount of the monthly per payphone compensation will change as a result of the Second Payphone Order. See note 5, supra.

9 LECs were excluded. In addition, smaller IXCs were excluded. These exclusions are currently under review in the pending portion of this proceeding still on remand from the court's decision in IPTA, supra.

10 The LECs also became eligible for this compensation as of April 15, 1997, by which time they were directed to remove their payphones and associated costs and revenues from regulated accounts.

In order to ensure that IXCs would have the ability to track payphone calls and pay compensation on a per-call basis, the Payphone Order, as clarified on reconsideration, requires local exchange carriers ("LECs") to transmit, with each call from a payphone, coding digits that identify the call to the IXC as originating on a payphone line. Payphone Order, ¶ 98, Payphone Recon., ¶ 64. IXCs, in turn, are required to develop a mechanism, which may rely on the information to be transmitted by LECs, for tracking payphone calls and compensating each payphone provider based on the number of calls associated with each payphone provider's payphone lines.

Implementation of these requirements is relatively straightforward in the case of the "smart lines" or "coin lines" that are used to connect the "dumb" payphones traditionally used by LEC PSPs. In addition to transmitting the ANI[11] to the IXC, smart payphone lines transmit two digits, known as the ANI II digits. In the case of LEC payphones on coin lines, the ANI digits are "27," which are used *only* with payphone lines. Therefore, an IXC receiving these digits receives an immediate, unequivocal signal that the associated call is a payphone call.

However, implementation of the coding digits and call-tracking requirements is more complicated in the case of the "dumb" lines used to connect "smart" payphones, which are used overwhelmingly by independent PSPs. With calls from those lines, the LECs transmit the ANI digits "07," which are used with a variety of "restricted" lines,

---

[11] The ANI is the "bill to" number that is transmitted to the carrier on every toll call. In the case of payphones, the ANI is virtually always the originating line number.

including but not limited to payphone lines.[12] LECs contend that the current configuration of most switches does not permit the addition of new codes that would enable the addition of a new "payphone-specific" digit pair for "dumb" payphone lines to replace the current "generic" "07" restricted code.

A number of alternative methods have been suggested by various parties for dealing with this problem:

> Option 1: Adding new "hard coded" digit pairs. This approach involves modifying the end office switch so that an additional digit pair would be available to uniquely identify "dumb" payphone lines. This unique digit pair would be transmitted with the call in the same way that "07" and "27"[13] are currently transmitted.[14]
>
> Option 2: "Flex ANI." This approach involves changing the manner in which ANI is transmitted on all calls. With this change, many new codes would become available to identify particular characteristics of lines, including but not limited to the "70" code that uniquely identifies "dumb" payphone lines.[15]
>
> Option 3: "OLNS." This approach involves continuing to transmit the non-unique "07" code, but allowing the IXCs to differentiate in real time between payphone calls and non-payphone

---

12 The original purpose of the "07" digits was to alert carriers that calls reaching an operator position should not be billed to the originating line, but should be billed in some other fashion, i.e., to a calling card, a third number, or "collect." Payphone lines require this type of restricted status in order to prevent certain types of payphone fraud.

13 Bellcore has identified the digit pair "70" as the coding digits to be used for smart payphones on "dumb" lines. See "Local Exchange Routing Guide, General Information", Section 1, pp. 219 et. seq. (March 1, 1997).

14 "Hard coding" apparently involves replacement of current switch generics with new generics that allow transmission of additional codes, without the use of Flex ANI. See text following this note. The LECs insist that this option is far too costly to consider.

15 A unique code pair, "29," would also be available to identify calls from lines in criminal inmate facilities, since these lines generally allow only collect calls.

calls by querying a "line information data base" ("LIDB") where additional specific information is stored. The IXC receives a more specific pair of digits (such as the payphone-specific "70" code that is unique to "dumb" payphone lines) in response.

Option 4: Screening "07" calls against LEC ANI lists. This approach involves continuing to transmit "07" with calls from dumb payphone lines. After compiling a pool of "07" calls, IXCs would identify those "07" calls originating from payphones by screening the pool of "07" calls against the list of payphone line numbers that the LECs are required to make available to IXCs under the Payphone Order. Unlike the other three alternatives, no party contends that this approach complies with ANI digit requirement of the Payphone Order.[16]

Despite these various proposed alternatives, the LECs and IXCs have been unable to agree on a mutually acceptable approach to implementing the per-call compensation requirement. Indeed, the history of LEC and IXC "attempts" to implement this requirement is a sad commentary on the unwillingness of industry groups with divergent interests to put aside their differences and work together to ensure collective compliance with a Commission order. From the beginning of the Commission's attempts, LECs and IXCs have inflexibly espoused utterly inconsistent interpretations of the FCC's coding digit requirement as applied to "dumb" lines.

AT&T and MCI insisted that LECs are not only required to transmit unique "payphone-specific" coding digits that denote *only* payphone lines, but are also required to transmit these unique coding digits simultaneously with the call and the ANI. This interpretation of the requirement would rule out Option 3, OLNS, which requires resort to

[16] The LECs are required to provide these lists so that the IXCs who must pay dial-around compensation can verify that lines for which PSPs seek dial-around compensation are in fact payphone lines.

the separate LIDB to get exact coding digits. In addition, at least as late as May 21, 1997, AT&T insisted that Option 2, "Flex ANI" -- the least costly method for LECs to ensure the simultaneous transmission of unique coding digits with the call -- could not be supported by AT&T's switches. Letter to Regina M. Keeney from E.E. Estey, May 21, 1997, at 3. Thus AT&T at once insisted on the simultaneous delivery with the ANI of "payphone-specific" coding digits for "dumb" payphone lines while rejecting the most feasible known method of delivering such digits.[17]

While AT&T has now relented somewhat on Flex-ANI and even seems to want it, AT&T continues to insist that per-call compensation is not feasible without the delivery of unique coding digits simultaneous with the ANI of each payphone call. AT&T acknowledges that it is possible to track access code calls on a per call basis, without payphone specific ANI digits, but claims it is not possible to track subscriber 800 calls without payphone specific digits. In essence, AT&T explains that access code calls are routed through its operator services network. The 5ESS switches in that network can read the "07" digit pair and access a data base to ascertain on a real time basis that a call is originating from a payphone. The call record that is generated reflects a payphone call. But a subscriber 800 call is routed over AT&T's "conventional" "direct dial" network. The 4ESS switch to which the subscriber 800 call is delivered is unable to access any ancillary data base. It simply records a "conventional" automated message account

---

[17] AT&T was apparently partly motivated by the fact that Flex ANI, where offered, is generally a tariffed service that IXCs must purchase. Further, as discussed below, at the time, the LEC estimates for the cost of implementing Flex ANI, were extraordinarily high.

("AMA") call record and allows the call to go through. AT&T claims that this call record, which does show the "07", does not show the call originated from a payphone. AT&T claims it cannot practically process this call as a payphone call because it has no ability to compare call records with ANI and the "07" code to the LEC lists of payphone ANI's. E.g., Letter to John Muleta from E.E. Estey, Oct. 14, 1997.

However, as discussed below (see Section IV), this position does not appear to be supported by facts or logic. Rather, the IXCs, or at least AT&T and MCI have stood upon what they claim to be their rights, as set forth in the Payphone Orders, and have implemented on their own, a per-call tracking system based on simultaneously receiving payphone-unique digits with the ANI and the call, without regard to the implementation being pursued by the LECs, and without regard to the feasibility of alternative methods of per-call compensation.

The LECs have been equally or more inflexible. The LECs took the position that the Payphone Order in no way required any alteration of the plans they had made to implement a different Commission order regarding payphone ANI digits. Under this order, adopted for a different purpose, the LECs were allowed to satisfy their obligations by implementing either Option 2 (Flex ANI) or Option 3 (OLNS).[18] All the major LECs say they will implement one of these two solutions, over time. However, implementation of neither system is universal. After the Payphone Order, the LECs persisted in their

---

[18] Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Third Report and Order, CC Docket No. 91-35, FCC 96-131, released April 5, 1996.

position that they could implement either Flex ANI or OLNS, even though their legal rationale for how OLNS complies with the Payphone Order is murky at best, and even though the IXCs have repeatedly claimed that OLNS poses major difficulties for their implementation of certain aspects of the compensation scheme.[19] The LECs apparently were willing to maintain a rigid position and put per-call payphone compensation at risk because the overwhelming majority of their payphones are *not* at risk: they are connected to "smart" lines that already have payphone-specific "27" digits and thus can meet the IXCs' specifications for per call compensation.

The strength of the LEC's position, to the extent it had any, was based on their argument that a requirement for simultaneous transmission of payphone-specific coding digits with every ANI and payphone call -- either through "hard coding" or Flex ANI -- would impose unacceptably high costs. However, the LECs' position in this regard has been dramatically undercut by the most recent cost evidence submitted by USTA. According to USTA's October 24, 1997 ex parte submission, if one excludes the cost of upgrading non-equal-access switches to equal-access status, the cost of universally implementing Flex ANI is not $171 million, as previously claimed, but $73 million, and only $61 million for *all* switches already converted to equal access.[20]

---

19 See Section I. below.

20 USTA explains that it would cost $238.6 million to upgrade some 1293 digital and electro-mechanical non-equal access switches. There is an additional $11.6 million dollars associated with providing these same offices with Flex ANI once they have been upgraded.

The Commission should not require these end offices to upgrade to equal access (Footnote continued)

In summary, despite the Commission's heroic efforts to carry out its statutory mandate, neither the IXCs nor the LECs have acted in a manner conducive to resolving the implementation of per-call compensation. The IXCs say they will not pay per-call compensation unless they receive payphone-specific ANIs with the call. The LECs say they cannot feasibly provide payphone-specific ANIs with the call until some yet-to-be defined date. Although APCC has repeatedly raised these implementation issues throughout these proceedings,[21] the issues have gone unresolved, while the LECs and IXCs play out their

---

(Footnote continued)
capability for the purpose of providing payphone specific ANI digits. These end offices are generally acknowledged to serve only a small number of payphones. As these end offices are otherwise upgraded to equal access capability, they should also be upgraded to Flex ANI. But the Commission should simply exempt them permanently from the requirement to provide payphone specific ANI digits until they are upgraded. Dial-around compensation for payphones served by these end offices should be based on whatever allocation formula the Commission ultimately adopts for interim compensation. This treatment would be consistent with the way these offices were treated when AT&T was paying per call compensation for access code calls only pursuant to Commission waiver Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 10 FCC Rcd 1590 (1994). The payphones served by non-equal access end offices were compensated on the basis of an average number of payphone calls.

[21] The discriminatory nature of the current system remains pending in APCC's Application for Review of the Bureau's Orders in this docket approving implementation of the comparably efficient interconnection plans required of the BOCs under the Payphone Orders. Consolidated Application of the American Public Communications Council for Review of the CEI Orders, filed May 19, 1997. But independent payphone service providers have raised this issue on numerous other occasions, beginning from the first comments filed in this docket. See, e.g., Comments of the American Public Communications Council, filed July 1, 1996, at 28-30; Reply Comments of the American Public Communications Council, filed July 15, 1996, at 19-25; Petition of the New Jersey Payphone Association for Partial Reconsideration and Clarification, filed October 21, 1996, at 9-11; American Public Communication Council's Opposition to Petitions for Reconsideration of IXCs and Messaging Providers, filed October 28, 1996, at 18-21; Comments of the American Public Communications Council on BellSouth's CEI Plan,
(Footnote continued)

game of regulatory "chicken." For APCC and its members, however, per-call compensation is a matter of economic life or death. The court of appeals' recent decision in IPTA which vacated the FCC's interim compensation scheme, not only deprived PSPs of current compensation but also removed the default compensation system that had been available to fill the void in case per-call compensation was not implemented on time. Now that per-call compensation *has* failed to be implemented on time, quick, decisive action is essential to resuscitate the statutory mandate of fair payphone compensation and full competition.

## ARGUMENT

### Introduction

The result of the LEC and IXC intransigence has been to provoke the Commission to grant a waiver on its own motion, in order to address imminent and widespread non-compliance with the rule. Order, DA 97-2162, released October 7, 1997. Now the Commission is seeking comment on waiver petitions that, in essence, seek an industry-wide exemption from compliance by the LECs and a second industry-wide waiver for any IXC that claims it cannot comply. But the Commission cannot simply grant industry-wide waivers that rob its rule of any vitality by exempting from compliance the two largest categories of parties subject to the rule. The Commission is not free to

---

(Footnote continued)
filed December 31, 1996, at 21-24.

eviscerate its rules by waiver. E.g., Southwestern Bell Tariff F.C.C. No. 73, DA 97-1472, ¶ 13 (rel. July 14, 1997). A simple grant of these waivers will push the Commission across this line. Waivers must be justified by facts that show why application of the policy to a *particular* party would be contrary to the purposes of the rule. See Id. (deviation from rule would better serve the interests of the rule). The Commission must impose stringent conditions and take clear steps to ensure that the waivers are short-lived and in keeping with the purposes of the per-call compensation rule.

In APCC's view, the Commission must, as soon as possible, provide clear answers to four questions: (1) what coding digit system is ultimately required; (2) when must that system be implemented; (3) how should the coding digit service be tariffed; and (4) what system should apply to ensure fair and timely compensation during the Waiver Period. The Commission must not lose sight of the need to ensure that, whatever the ultimate requirements, and however long it takes, PSPs are fairly compensated ***in a timely manner*** during the period leading up to full implementation of per-call compensation. The Commission cannot allow PSPs to go uncompensated because the IXCs -- who have every incentive to continue evading their per call compensation obligations as long as possible -- stand on their perceived legal rights and refuse to track until their unilateral demands are met, while the LECs, who can already receive per-call compensation from most of their payphones, maintain an equally intransigent position based on cost estimates that are now contradicted by their own record submissions.

The Commission must also recognize that more, much more, is at stake here than payphone compensation. There is a real sense in which the Payphone Orders are on the cutting edge of the Commission's objectives under the 1996 Act. Deregulation has actually happened in the payphone industry. The structure is in place for subsidies to be eliminated. Payphone policy is thus further along than any part of the Commission's policy "trilogy" of interconnection, access, or universal service. ANI digits are one of a handful of discriminatory artifacts from the "old days" that stand in the way of a full launch of competition in this industry segment. The Commission must take strong action to bring the carriers and LECs into compliance.

## I. THE COMMISSION MUST IMMEDIATELY CLARIFY PRECISELY WHAT CODING DIGIT ALTERNATIVES LECS MUST PROVIDE

In order to decide the pending waiver requests and provide certainty to all participants in the compensation system, the Commission must *immediately* clarify which of the coding digit transmission alternatives described above are acceptable as implementation of per-call compensation. Until this question is answered, nobody is certain *what* is being waived. Further, without such clarification, LECs and IXCs will continue their mutually inconsistent implementation work, and there will be no coordinated progress toward a fully functioning per-call system.

The Commission needs to determine whether, in light of the information currently available, LECs should be required to implement Flex ANI universally,[22] so that

---

22 As noted above, another option is "hard coded" payphone-specific ANI digits. (Footnote continued)

IXCs always[23] receive payphone-specific ANI with the call, or whether they should be permitted to implement OLNS as an alternative. The principal advantages of Flex ANI appear to be twofold. First, it allows more efficient and reliable identification of payphone calls for purposes of paying per-call compensation. Second, Flex ANI makes it easier for IXCs to satisfy certain 800 service customers' requests to have all payphone calls blocked.[24]

An additional claimed advantage of Flex ANI (and disadvantage of OLNS) is that it enables IXCs to pass compensation payments through to their 800 service subscribers by billing them for payphone surcharges. However, at least some IXCs -- MCI and Sprint -- have stated that they are currently able to bill subscribers for payphone compensation surcharges, even on subscriber 800 calls. See Attachment 1. Therefore, it is questionable whether the importance of Flex ANI for billing purposes is as great as the IXCs claim.

---

(Footnote continued)
However, this approach appears so costly that there does not seem to be any sound reason to prefer it to Flex ANI.

23 The only exception is that there should continue to be no payphone-specific ANI digits transmitted from non-equal access switches. See note 20, supra.

24 Flex ANI would not appear to affect the IXCs' ability to block specific payphones that "overcharge" for dial-around calls once the dial-around rate is permitted to vary based on local calling rate. To implement that capability, the IXCs must screen calls for specific ANI numbers by developing a data base of blocked ANIs. The ability to perform such screening does not depend on the presence of payphone-unique coding digits. In some applications the ANI digits could be a screening device for reference to data base, but it is not clear why the "07" could not perform this screening function.

While these advantages of Flex ANI are undeniable, they are not overwhelming. Certainly they are not so overwhelming as to justify the game of regulatory "chicken" in which the IXCs have indulged, in which they have cavalierly allowed the per-call compensation deadline to pass without seriously attempting to work together to ensure a functioning per-call compensation system.

The principal alleged disadvantage of Flex ANI is its claimed cost. USTA initially claimed that implementation of a Flex ANI/only system would cost $770 million. The RBOC/GTE/SNET Coalition relied on this estimate to claim that Flex ANI would require a tariffed charge to payphone providers averaging 5-8 cents per call. Comments of the RBOC/GTE/SNET Coalition, filed August 26, 1997, Attachment 1 at 5. However, most of this cost estimate, it turned out, involved costs of equal-access conversion of non-equal-access switches. As discussed in these comments, equal access conversion should not be mandated for compensation purposes, and no part of equal access conversion costs should be assessed on PSPs. When equal access costs are eliminated from consideration, USTA's estimated cost of Flex ANI was greatly reduced, to $212 million. USTA Ex Parte, July 28, 1997, at 7.

USTA's most recent submission, however, has dramatically "adjusted" that cost estimate down to about $77 million. Letter to John Muleta from Keith Townsend, October 24, 1997, at 4. These adjustments of USTA's estimate undercut the credibility of the RBOC Coalition estimate as well. If the LECs' own estimate is now in the ballpark of $50-$100 million, then it is likely that actual costs will turn out to be even lower, and that

Flex ANI will not cost more than one cent per call. This may be an acceptable price to pay for the greater reliability and accuracy that Flex ANI would bring.

## II. THE TIMETABLE TO IMPLEMENT THE SYSTEM SHOULD BE SHORT, ABSOLUTE, AND SUPPORTED BY SANCTIONS

In addition to clarifying exactly what type of ANI digit service is required, the Commission must establish a timetable for conversion to the system. Given the revised USTA cost estimate, there is no longer even a bad excuse for LECs to delay further their compliance with the Payphone Orders. APCC sees no reason why every payphone line (except those served by non-equal-access switches) cannot be converted to Flex ANI by the March 9 deadline established in the Payphone Order.

The timetable must require LECs to file tariffs for any PSP charges well in advance of the deadline, to allow time for review of the tariffs before they take effect. Further, there must be a clear procedure for PSPs to pre-order Flex ANI service, to the extent that they are required to do so. Every PSP must have an ample opportunity to learn about the service and any associated charges and to order the service sufficiently early so that the service is operating before the per-call compensation period begins.

The deadlines for LEC compliance should be absolute and supported by sanctions. If a LEC fails to implement Flex ANI by the Commission's deadline, the LEC should be disqualified from receiving payphone compensation until it complies.

Furthermore, the Commission should make clear that PSPs may file complaints against the LEC for the full amount of payphone compensation that can be reasonably demonstrated would be collected from IXCs if the LEC had complied with the Payphone Order. The Commission has ample authority to condition LEC payphone compensation on compliance with fundamental Payphone Order requirements. Reconsideration, ¶ 131. Indeed, the Commission has already conditioned LEC eligibility for compensation on removal of the discrimination prohibited by Section 276. There can be no more blatant example of LEC discrimination than their provision of payphone-specific ANI digits *only* on lines used overwhelmingly by their own payphones.

## III. THE COMMISSION SHOULD SPECIFY THE MANNER OF TARIFFING AND COST RECOVERY FOR THE REQUIRED CODING SERVICES

At the same time that it clarifies the type of coding digit service that is required, the Commission should address the manner in which that service should be tariffed.

First, given the importance of this service to the federal compensation scheme, there can be little dispute that the coding digit service must be federally tariffed.[25]

Second, the Commission should make clear that the costs of Flex ANI must not be assessed solely on PSPs. Obviously, any costs attributable to the upgrading of

---

[25] In ruling on which payphone-related network services must be federally tariffed, the Bureau has specifically ruled that call screening services are required to be federally tariffed. Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128, DA 97-678 (rel. Apr. 4, 1997). Although the Bureau also ruled that only "payphone-specific" services must be federally tariffed, and although some LECs have refused to tariff their screening services on the ground that they are not "payphone-specific," there can be no dispute that a service charged only to payphone providers is "payphone-specific." However, irrespective of the result under prior rulings, the Commission should find that Flex ANI charges must be federally tariffed in view of the importance of the service to the federal compensation scheme.